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APPLICATION NO.	FIL	ING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,115	06/14/2002		Henricus Wilhelmus Theodorus Janssen	EF377397961US	1559
7	590	01/23/2003			
Baker Botts			EXAMINER		
30 Rockefeller Plaza New York, NY 10112				VALENTI, ANDREA M	
				ART UNIT	PAPER NUMBER
				3643	**

Please find below and/or attached an Office communication concerning this application or proceeding.

DATE MAILED: 01/23/2003

.1.								
		Application No.	Applicant(s)					
•	Office Action Summary	10/018,115	JANSSEN, HENRICUS WILHELMUS THEODORUS					
	omoc Action Cummary	Examiner	Art Unit					
		Andrea M. Valenti	3643					
Period f	The MAILING DATE of this communication a or Reply	ppears on the cover sheet with	n the correspondence address					
THE - Extra afte - If th - If N - Fail - Any	MORTENED STATUTORY PERIOD FOR REF MAILING DATE OF THIS COMMUNICATION ensions of time may be available under the provisions of 37 CFR of SIX (6) MONTHS from the mailing date of this communication. The period for reply specified above is less than thirty (30) days, a recommendation of the period for reply is specified above, the maximum statutory period to reply within the set or extended period for reply will, by static reply received by the Office later than three months after the mained patient term adjustment. See 37 CFR 1.704(b).	1.  1.136(a). In no event, however, may a repepty within the statutory minimum of thirty (bd will apply and will expire SIX (6) MONTHute, cause the application to become ABAI	ly be timely filed (30) days will be considered timely. HS from the mailing date of this communication. NDONED (35 U.S.C. § 133).					
1)🛛	Responsive to communication(s) filed on 1-	4 June 2002 .						
2a)□	This action is <b>FINAL</b> . 2b)⊠	This action is non-final.						
3)□	Since this application is in condition for allocalosed in accordance with the practice unde							
Disposit	tion of Claims							
4)⊠	Claim(s) 1-23 is/are pending in the applicati							
	4a) Of the above claim(s) is/are withdo	rawn from consideration.						
5)[	Claim(s) is/are allowed.							
6)⊠	Claim(s) <u>1-23</u> is/are rejected.							
7)	Claim(s) is/are objected to.	(s) is/are objected to.						
•	Claim(s) are subject to restriction and	/or election requirement.						
·· _	tion Papers							
·	The specification is objected to by the Exami	<u></u>	- Francisco					
רו(טו	The drawing(s) filed on is/are: a) acc	•						
11\□	Applicant may not request that any objection to The proposed drawing correction filed on							
٠٠/١ــا	If approved, corrected drawings are required in		approved by the Examiner.					
12)□	The oath or declaration is objected to by the I							
	under 35 U.S.C. §§ 119 and 120							
	Acknowledgment is made of a claim for forei	ian priority under 35 U.S.C. &	119(a)-(d) or (f)					
-	D⊠ All b) Some * c) None of:	gir priority under do d.d.d. 3	110(0) (0) 01 (1).					
-,	1. Certified copies of the priority docume	nts have been received.						
	2. Certified copies of the priority docume		olication No					
*;	3. Copies of the certified copies of the prapplication from the International Esee the attached detailed Office action for a lie.	iority documents have been re Bureau (PCT Rule 17.2(a)).	eceived in this National Stage					
	Acknowledgment is made of a claim for dome	•						
_ 6	a) The translation of the foreign language p Acknowledgment is made of a claim for dome	provisional application has bee	en received.					
Attachme	-	one priority under 50 0.0.0. S	3 120 and/01 121.					
1) 🔀 Noti	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Inf	nmmary (PTO-413) Paper No(s) ormal Patent Application (PTO-152)					

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#### **DETAILED ACTION**

## Claim Objections

Claims 4-15 and 19-23 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

## Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 9, 16, and 19, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The

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Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 5 recites the broad recitation binding agent, and the claim also recites latex which is the narrower statement of the range/limitation.

Claims 2-4, 6-8, 10-15, 17-18, and 20-23 are rejected as being dependent from rejected base claims.

## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 994,816 to Cahill.

Regarding Claims 1 and 16-18, Cahill teaches a method of manufacturing a plant support manufactured having an at least partially open wall, the box-shaped element (Fig. 1) being at least partially covered with a preferably substantially biodegradable covering material (Fig. 2 and page 1 line 25), the covering material being provided in such a manner that it covers the partially open wall at least partially, such that the wall

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becomes soil-proof, while roots of a plant, growing in the pot during use, can grow at least partially through the covering material (page 1 line 80-84) and the wall to the outside of the plant support, characterized in that as covering material a material is manufactured from biodegradable material

Regarding Claim 2, Cahill teaches the box-shaped element is at least substantially manufactured from material having a mesh-shaped structure (Fig. 1).

Regarding Claim 3, Cahill discloses the box-shaped element is substantially manufactured from wire material (page 1 line 55).

#### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 3,818,633; U.S. Patent No. 5,768,825; U.S. Patent No. 4,336,669; U.S. Patent No. 3,921,333; U.S. Patent No. 6,185,864; U.S. Patent No. 4,604,825; U.S. Patent No. 5,454,191; and French Patent FR2605335.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV January 21, 2003

PETER N. POON

SUPERVISORY PATTY EXAMINES TECHNOLOGY CENTER 3600